

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

PUGET SOUND CLEAN AIR AGENCY,
a municipal corporation,

Plaintiff,

v.

THE STATE OF WASHINGTON,

Defendant.

NO.

COMPLAINT FOR DECLARATORY
JUDGMENT

INTRODUCTION: NATURE OF ACTION

1. The Puget Sound Clean Air Agency ("Agency") is a regional government responsible for air quality regulation and management in the four-county region of King, Pierce, Snohomish, and Kitsap Counties. The Agency's authority is derived from state and federal law.

2. Under federal and state law, the Agency is required to administer an operating permit program. The operating permit program is designed to ensure compliance with clean air laws by the local businesses that emit certain levels of air pollutants and have the greatest impact on local air quality. Under federal law, the permitting authority must recover the full costs of this operating permit program from the

1 approximately 50 businesses that are subject to the program within the Agency's four-
2 county jurisdiction. This federal mandate is incorporated into state law and has been
3 delegated to the Agency.

4 3. The Agency seeks a declaratory judgment that Initiative 695 ("I-695") does
5 not prohibit the Agency from obtaining full reimbursement of the costs of the operating
6 permit program.

7 4. The Agency also requests a declaratory judgment regarding the application
8 and effect of the voter approval requirement for any fees and charges that are subject to
9 I-695.

10 **PARTIES**

11 5. The Agency is a regional government created under the State Clean Air
12 Act, RCW ch. 70.94. Pursuant to RCW 70.94.081, the Agency is a municipal
13 corporation.

14 6. The State of Washington is responsible for enforcing initiatives enacted by
15 the people. It is a proper party to this lawsuit.

16 **JURISDICTION AND VENUE**

17 7. This Court has jurisdiction under RCW 2.08.010 and 7.24.010.

18 8. Venue is proper in this Court under RCW 4.92.010(1).

19 **BACKGROUND FACTS**

20 **Initiative 695**

21 9. Initiative 695 was approved by the voters on November 2, 1999, and
22 became effective January 1, 2000.

23 10. Among other things, Section 2 of I-695 purports to require voter approval
24 of tax and fee increases by the State and any local government.

25 11. Section 3 of I-695 repealed RCW 82.44.020(2), the clean air excise tax
26 which was in the amount of \$2.00/vehicle.

The Federal Clean Air Act

13. The federal Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, sets forth laws applicable to the sources of air pollution in the State of Washington that have an impact on air quality. The federal Clean Air Act imposes numerous regulatory requirements, assesses fees on businesses based on the quantity and quality of the pollutants they emit, and allows for the imposition of civil and criminal penalties for violation of the Act.

14. To promote state and local involvement, the federal Clean Air Act sets forth a mechanism for delegating to state and local agencies authority to administer the operating permit program. 42 U.S.C. §§ 7661-7661a.

15. Pursuant to federal law, the State of Washington and the Agency have been delegated this authority. 40 C.F.R. Pt. 70 & App. A. Under federal and state law, the Agency, as the "permitting authority," is responsible for administering the operating permit program within its jurisdiction. 42 U.S.C. §§ 7661-7661a; 40 C.F.R. Pt. 70.

The Puget Sound Clean Air Agency

16. The Agency is one of several regional governments in the State responsible for regulating and managing air quality within its jurisdiction. The Agency's jurisdiction is within King, Pierce, Snohomish, and Kitsap Counties. The Agency is governed by a nine-member Board of Directors, eight of whom are elected officials representing the counties and cities within the four counties. The Agency adopts an annual budget which identifies the resources necessary to accomplish its responsibilities within its projected revenues.

17. On December 9, 1994, and pursuant to the state and federal clean air acts, the Agency was designated as the "permitting authority" as defined in 42 U.S.C. § 7661(4). 40 C.F.R. Pt. 70 App. A. Accordingly, it is obligated to comply with various requirements of the federal and state clean air acts. 42 U.S.C. §§ 7661-7661a; 40 C.F.R. Pt. 70; RCW ch. 70.94; WAC 173-401 *et seq.*

1 18. Revenue sources for the Agency include funds from the State of
2 Washington as disbursed through the Air Pollution Control Account created by RCW
3 70.94.015, federal grants from the United States Environmental Protection Agency,
4 supplemental income paid by cities and counties pursuant to the clean air acts, and fees
5 collected under various programs run by the Agency. Such programs include the
6 operating permit program.

7 **Fees Under Operating Permit Program**

8 19. The operating permit program is one of the fee-based programs
9 administered by the Agency. The operating permit program is required by federal law.
10 42 U.S.C. §§ 7661-7661f. In accordance with federal law, the State of Washington has
11 enacted RCW 70.94.161 and .162, which also govern the Agency's operating permit
12 program. Although the program is required by federal law, it may be administered by a
13 state or local agency. 42 U.S.C. §§ 7661-7661a; 40 C.F.R. Pt. 70; RCW 70.94.161 and
14 .162; WAC 173-401-400. In the absence of a state or local agency operating the
15 program, it would be administered by the U.S. Environmental Protection Agency. 42
16 U.S.C. §§ 7661-7661a.

17 20. Under the operating permit program, companies (referred to as "sources"
18 under the Clean Air Act) that emit threshold amounts of pollutants are required to pay
19 certain fees which are used to monitor and regulate those sources and ensure compliance
20 with various requirements of the federal and state clean air acts. By federal law, the
21 delegated authority must recover 100% of the cost of the operating permit program from
22 the regulated sources. 42 U.S.C. § 7661a(b)(3). This federal mandate has been
23 incorporated into state law. RCW 70.94.162. Thus, the Clean Air Act mandates that the
24 Agency charge the regulated sources a fee in an amount that will reimburse the Agency
25 its costs of administering the operating permit program as well as a share of the
26 Washington State Department of Ecology's oversight costs. *Id.*

1 21. Approximately 50 sources within King, Pierce, Snohomish, and Kitsap
2 Counties are subject to the operating permit program delegated to the Agency. Only the
3 sources subject to this program pay an annual operating permit fee. No tax, fee or charge
4 is imposed on the public.

5 22. The Agency is reimbursed its operating permit program costs by the
6 sources based in part on the quantity and harmfulness of each's source's air emissions and
7 the complexity of the oversight required. The overall costs for this program have
8 increased through the years. The operating permit program costs billed in 1999 were
9 \$1,246,160.00.

10 23. If subsequent increases in annual program costs cannot be passed on to the
11 sources, the Agency will be in violation of state and federal law. First, as noted above,
12 federal and state laws require that the sources pay 100% of the total program costs. 42
13 U.S.C. §7611a(b)(3); RCW 70.94.162(2). Second, the allocation among the sources will
14 be unfair if it remains static and cannot be adjusted annually to reflect changes in the
15 nature and extent of the sources' relative impacts on air quality, the complexity of their
16 operations, and which sources are requiring the greatest amount of Agency resources to
17 address. Without such fee adjustments, sources that run simple operations, generate
18 minimal emissions, and require minimal Agency resources, may pay higher fees than
19 would otherwise be fair or appropriate. This inequitable result is contrary to the policy of
20 the clean air acts, which provide that the costs of protecting the air resource and
21 operating local air pollution control programs shall be allocated as equitably as possible
22 among all sources whose emissions cause air pollution.

23 CLAIMS FOR DECLARATORY JUDGMENT

24 24. The Agency seeks a declaratory judgment that Initiative 695 does not
25 prohibit the Agency from obtaining full reimbursement of the costs of the operating
26 permit program as required by federal law. This aspect of I-695 is either preempted by

1 federal law or, alternatively, it was not the intent of the voters, in enacting I-695, to
2 prohibit the Agency from obtaining full reimbursement of the costs of the operating
3 permit program and, by doing so, jeopardize the delegated authority of the State
4 Department of Ecology and local clean air agencies to regulate and manage air quality in
5 Washington.

6 24. The Agency seeks a declaratory judgment that I-695 is unconstitutional for
7 one of more of the following reasons:

- 8 a. Violation of the one-subject rule (Article II, § 19);
- 9 b. Improper amendment of initiative and referendum procedures
10 (Article II, §§ 1 and 22);
- 11 c. Improper repeal of statutes (Article II, § 37);
- 12 d. Improper attempt to amend constitution (Article XXIII); and
- 13 e. Improper restriction on municipal taxing authority (Article XI,
14 § 12).

15 25. The Agency reserves the right to raise or join in other constitutional
16 challenges to I-695 raised by other plaintiffs in the consolidated and coordinated I-695
17 lawsuits.

18 26. The Agency seeks a declaratory judgment regarding the voter approval
19 requirement, if applicable. If operating permit program fee or other fees set by the
20 Agency are subject to I-695 and require voter approval, the Agency needs to determine
21 the answer to such questions as:

- 22 a. Who should vote on these fees;
- 23 b. When and how would the election be conducted; and
- 24 c. Which voters need to approve the fee increase—voters in each
25 of the four counties and 83 cities within the Agency's jurisdiction, or majority vote within
26 the entire four-county area.

1 **REQUEST FOR RELIEF**

2 Plaintiff Puget Sound Clean Air Agency requests the following relief:

3 1. A declaratory judgment that I-695 does not apply to the operating permit
4 fees charged by the Agency;

5 2. A declaratory judgment that I-695 is unconstitutional;

6 3. A declaratory judgment regarding whether I-695 requires the Agency to
7 obtain voter approval of any increases in taxes, fees, or other monetary charges, and, if
8 so, a declaratory judgment regarding the manner and method under which the Agency is
9 to obtain voter approval;

10 4. An award of the Agency's legal fees and costs; and

11 5. Such other and further relief as this court may consider just and equitable.

12 DATED: January 21, 2000.

13 SHORT CRESSMAN & BURGESS PLLC

14 By Andrew W. Maron
15 Scott A. Smith, WSBA No. 11975
16 Andrew W. Maron, WSBA No. 7482
17 R. Brent Walton, WSBA No. 27395
18 Short Cressman & Burgess, PLLC
19 999 Third Ave., Suite 3000
20 Seattle, WA 98104-4088
21 206-682-3333
22 Fax: 206-340-8856
23 Attorneys for Plaintiff Puget Sound Clean Air
24 Agency

21 PUGET SOUND CLEAN AIR AGENCY

22 By Andrew W. Maron
23 Laurie S. Halvorson, General Counsel
24 WSBA No. 17313
25 Puget Sound Clean Air Agency
26 110 Union Street, Suite 500
Seattle, WA 98101
206-689-4030
Fax: 206-343-7522
Attorneys for Plaintiff Puget Sound Clean Air
Agency